IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 244/2000

1. The Chief Town Planner,
Town and Country Planning Dept.
Panaji, Goa.

2. The Dy. Collector (LA) and
Land Acquisition Officer,
Panaji, Goa. ..... Appellants.

V/s.

Smt. Guilhermina Tereza da Conceicao
Viera Dalgado e Gomes Fernandes,
r/o. Opp. Pandurang Saw Mill,
Betim, Bardez, Goa. ..... Respondent.

Mr. S.R. Rivonkar, Government Advocate for the appellants.

Mr. R.G. Ramani, Advocate for the respondent.

CORAM : P.V. HARDAS &
N.A. BRITTO, JJ.

DATE : AUGUST 09, 2004.

ORAL JUDGMENT : (Per HARDS, J.)

The appellants being aggrieved by the Judgment and Award passed by the Addl. District Judge, Mapusa in Land Acquisition Case No. 110/90, have filed the present first appeal, challenging the aforesaid

Judgment and Award.

2. The facts in brief, as are necessary for the decision of this appeal, can briefly be stated as under :

The state Government issued a Notification under Section 4 of the Land Acquisition Act on 16.12.1981, which was published in the Official Gazette on 7.1.1982, acquiring an area of 92,745 sq. metres of land of part of Survey No.77, situated at Village Pilerne, Bardez for the purpose of residential development under I.U.D.P. at Porvorim, Bardez on behalf of the first appellant. The Land Acquisition Officer awarded compensation of Rs.25/- per sq. metre. The respondent being dis-satisfied with the award of compensation by the Land Acquisition Officer, sought a reference alleging that the market rate of the acquired land was Rs.150/- per sq. metre.

3. On a reference being made under Section 18 of the Land Acquisition Act, the reference Court framed an issue as to whether the rate of the acquired land, on the date of Section 4 Notification was Rs.150/- per sq. metre ? The respondent examined Mario Anton S. Delgado Godinho as AW.1 and Rui Ribeiro Santan, a Civil Engineer as AW.2. The respondent also examined Celestino D'Souza, Chandrakant Govekar, and Narcinva Govekar as AWs. 3, 4 and 5. The appellants, who were the respondents before the reference Court, examined Mohan

Sakhe Naval as RW.1.

4. AW.1 in his evidence had stated that the acquired land is situated at Alto Porvorim and the nature of the land was flat with negligible rocky slope, ideal for construction. There were infrastructural facilities such as transport, electricity, water and telephone. The national highway was touching the acquired land and there was a direct access from the acquired land to the national highway, by road which was motorable. The acquired land was at a distance of about 4 kms. from Panaji City and was at a distance of about 1.5 kms. from market of Porvorim. There were hospitals and clinics at a distance of about 200 metres from the acquired land. Within a radius of about 500 metres, there were various educational institutions and hotels. He produced on record at Exhibit AW.1/C, a sale deed dated 22.8.1980 of sale of land at the rate of Rs.60/- per sq. metre. He further deposed that the land in the sale instance is similar to the acquired land which was ideal for construction. He also produced a sale instance at Exhibit AW.1/D dated 29.8.1981 in respect of an area of 500 sq. metres sold at the rate of Rs.75/- per sq. metre. He also produced another sale instance at Exhibit AW.1/E, dated 26.8.1981, in respect of land admeasuring 1000 sq. metres, which was sold at the rate of 80/- per sq. metre. In the cross examination he has admitted that the land in the sale instances were fully developed plots; whereas the acquired land was undeveloped.

5. AW.2 Rui Ribeiro Santan has deposed that according to him the market value of the acquired land was Rs.60/- per sq. metre.

6. AW.3 Celestino D'Souza has proved the sale instance at Exhibit AW.1/C, Chandrakant Govekar AW.4 has proved the sale instance at Exhibit AW.1/D and Narcinva Govekar AW.5 has proved the sale instance at Exhibit AW.1/E.

7. Mohan Sakhe Naval who has been examined on behalf of the appellants as RW.1, has admitted that the land was acquired for residential purpose and the acquired land was rocky and sloppy. After acquisition, the land was developed and was marked into plots. He has further admitted that at the time of acquisition, electricity and water pipe line were on the road, which were by the side of the acquired land. In the cross examination, he has admitted that 20 % of the acquired land was occupied under roads, while 80 % of the acquired land was covered by plots. He has further admitted that the land was acquired as the land was fit for construction and water, electricity and telephone lines were available.

8. The reference Court, in para 9 of the Judgment, has held that the State of Goa had acquired the land for the purpose of developing the land for construction of residential houses and the situation of the acquired land was such that a portion abuts the road and had a good

frontage. The infrastructural amenities such as schools, colleges, public institutions, market, shopping centres were in a close proximity and if the land had not been acquired, the land could have been developed by private parties for residential purposes. The acquired land was at a distance of about 3 kms. from Panaji and about 8 kms. from Mapusa. The reference Court, in para 15 of the Judgment by referring to the sale instances, as deposed by AWs. 3, 4 and 5 at Exhibits AW.1/C, AW.1/D and AW.1/E, found that the land in the sale instances, was similar to the acquired land as the land in the sale instances had all infrastructural facilities, which were available in respect of the acquired land. The land covered by the sale instances and the acquired land was in close proximity. The only difference that was noticed by the reference Court was that the lands covered under the sale instances were smaller pieces of land, ranging from 382 to 1000 sq. metres; whereas the acquired land was admeasuring 92,745 sq. metres. The reference Court at para 19 then taking into consideration that the acquired land was an undeveloped and large piece of land, deducted 33 % of the market rate as per the sale instances and recorded a finding that the market rate of the land under acquisition was Rs.54/- per sq. metre. Accordingly, passed the award enhancing the compensation at the rate of Rs.54/- per sq. metre.

9. Mr. Rivonkar, learned Counsel appearing on behalf of the appellants, has urged before us that the reference Court was in error in

relying upon the sale instances which were, admittedly, in respect of smaller plots of land. According to the learned Counsel for the appellants, the said sale instances ought to have been outrightly rejected by the reference Court. The reference Court has found that there were no sale instances in respect of plots of land and the reference Court was aware that the sale instances pertained to smaller plots of land. The reference Court has also taken into consideration the situation of the land and its close proximity, educational institutions, hospitals, market, etc. The reference Court has also taken into consideration that the acquired land was near the National Highway and from the acquired land, there was a direct access to the national highway, which was a motorable road. The reference Court also found that the infrastructural facilities such as electricity, water, telephone were available near the acquired land. The reference Court had deducted 33 % from the sale instance of Rs.80/- per sq. metres and had, accordingly, recorded a finding that Rs.54/- per sq. metre would be the price, which a willing purchaser would pay for purchasing the acquired land. The reference Court, accordingly, passed the award on the above terms. According to us, the reference Court has rightly deducted 33 % from the market rate in respect of smaller pieces of land and has recorded a finding that the market rate in respect of the acquired land was Rs.54/- per sq. metre.

10. With the assistance of the learned Counsel for the parties, we have perused the evidence and the Judgment and we do not see any

ground for interfering with the findings recorded by the reference Court. Some element of guesswork is bound to be there and we do not find any arbitrariness in enhancing the compensation to Rs.54/- per sq. metre. We, therefore, find that the appeal is devoid of any merit.

11. Accordingly, the first appeal is dismissed. In the circumstances, there shall be no order as to costs.

P.V. HARDAS, J.

N.A. BRITTO, J.

ssm.